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Bank of America, N.A.

9 [Other Counsel Are Listed At End]

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12

13 DAVID KECK, an individual,

Case No.: CV 08-1219 CRB

14 Plaintiff,

CLASS ACTION

15 vs.

STIPULATED PROTECTIVE ORDER

16 BANK OF AMERICA, a Delaware
Corporation; CENTRAL STATES
17 INDEMNITY CO. OF OMAHA, a Nebraska
Corporation; CSI PROCESSING, LLC, a
18 Nebraska Company, and DOES 1 through 100,

19 Defendants.

20

21 1. **PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve production of confi-
dential, proprietary, or private information for which special protection from public disclosure
23 and from use for any purpose other than prosecuting this litigation would be warranted. Ac-
cordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
25 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
26 all disclosures or responses to discovery and that the protection it affords extends only to the lim-
27 ited information or items that are entitled under the applicable legal principles to treatment as
28

1 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipu-
2 lated Protective Order creates no entitlement to file confidential information under seal; Civil
3 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that
4 will be applied when a party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Party: any party to this action, including all of its officers, directors, em-
7 ployees, consultants, retained experts, and outside counsel (and their support staff).

8 2.2 Disclosure or Discovery Material: all items or information, regardless of
9 the medium or manner generated, stored, or maintained (including, among other things, testi-
10 mony, transcripts, or tangible things) that are produced or generated in disclosures or responses to
11 discovery in this matter.

12 2.3 “Confidential” Information or Items: information (regardless of how gener-
13 ated, stored or maintained) or tangible things that qualify for protection under standards devel-
14 oped under F.R.Civ.P. 26(c).

15 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: ex-
16 tremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
17 party would create a substantial risk of serious injury that could not be avoided by less restrictive
18 means.

19 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 2.6 Producing Party: a Party or non party that produces Disclosure or Discov-
22 ery Material in this action.

23 2.7. Designating Party: a Party or non party that designates information or items
24 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confi-
25 dential – Attorneys’ Eyes Only.”

26 2.8 Protected Material: any Disclosure or Discovery Material that is designated
27 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

28

1 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
2 retained to represent or advise a Party in this action.

3 2.10 House Counsel: attorneys who are employees of a Party.

4 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
5 as their support staffs).

6 2.12 Expert: a person with specialized knowledge or experience in a matter per-
7 tinent to the litigation who has been retained by a Party or its counsel to serve as an expert wit-
8 ness or as a consultant in this action and who is not a past or a current employee of a Party or of a
9 competitor of a Party's and who, at the time of retention, is not anticipated to become an em-
10 ployee of a Party or a competitor of a Party's. This definition includes a professional jury or trial
11 consultant retained in connection with this litigation.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; orga-
14 nizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontrac-
15 tors.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
19 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
20 parties or counsel to or in court or in other settings that might reveal Protected Material.

21 4. DURATION

22 Even after the termination of this litigation, the confidentiality obligations imposed by this
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
24 otherwise directs.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or non party that designates information or items for protection under this Order must
28 take care to limit any such designation to specific material that qualifies under the appropriate

1 standards. A Designating Party must take care to designate for protection only those parts of
2 material, documents, items, or oral or written communications that qualify so that other portions
3 of the material, documents, items, or communications for which protection is not warranted are
4 not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unneces-
7 sarily encumber or retard the case development process, or to impose unnecessary expenses and
8 burdens on other parties), expose the Designating Party to sanctions.

9 If it comes to a Party's or a non party's attention that information or items that it desig-
10 nated for protection do not qualify for protection at all, or do not qualify for the level of protec-
11 tion initially asserted, that Party or non party must promptly notify all other parties that it is with-
12 drawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
15 material that qualifies for protection under this Order must be clearly so designated before the
16 material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of depo-
19 sitions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFI-
20 DENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each
21 page that contains protected material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
23 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
24 level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY").

26 A Party or non party that makes original documents or materials available
27 for inspection need not designate them for protection until after the inspecting Party has indicated
28 which material it would like copied and produced. During the inspection and before the designa-

1 tion, all of the material made available for inspection shall be deemed “HIGHLY CONFIDEN-
2 TIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it
3 wants copied and produced, the Producing Party must determine which documents, or portions
4 thereof, qualify for protection under this Order, then, before producing the specified documents,
5 the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CON-
6 FIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected
7 Material. If only a portion or portions of the material on a page qualifies for protection, the Pro-
8 ducing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
9 markings in the margins) and must specify, for each portion, the level of protection being asserted
10 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

11 (b) for testimony given in deposition or in other pretrial or trial proceed-
12 ings, that the Party or non party offering or sponsoring the testimony identify on the record, be-
13 fore the close of the deposition, hearing, or other proceeding, all protected testimony, and further
14 specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTOR-
15 NEYS' EYES ONLY." When it is impractical to identify separately each portion of testimony
16 that is entitled to protection, and when it appears that substantial portions of the testimony may
17 qualify for protection, the Party or non party that sponsors, offers, or gives the testimony may
18 invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20
19 days to identify the specific portions of the testimony as to which protection is sought and to
20 specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDEN-
21 TIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appro-
22 priately designated for protection within the 20 days shall be covered by the provisions of this
23 Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES' ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

8 5.3 Inadvertent Failures to Designate . If timely corrected, an inadvertent
9 failure to designate qualified information or items as “Confidential” or “Highly Confidential –
10 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
11 protection under this Order for such material. If material is appropriately designated as
12 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
13 produced, the Receiving Party, on timely notification of the designation, must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenge. Unless a prompt challenge to a Designating Party's
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
19 waive its right to challenge a confidentiality designation by electing not to mount a challenge
20 promptly after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designat-
22 ing Party's confidentiality designation must do so in good faith and must begin the process by
23 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
24 with counsel for the Designating Party. In conferring, the challenging Party must explain the
25 basis for its belief that the confidentiality designation was not proper and must give the Desig-
26 nating Party an opportunity to review the designated material, to reconsider the circumstances,
27 and, if no change in designation is offered, to explain the basis for the chosen designation. A

1 challenging Party may proceed to the next stage of the challenge process only if it has engaged in
2 this meet and confer process first.

3 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
4 Each such motion must be accompanied by a competent declaration that affirms that the movant
5 has complied with the meet and confer requirements imposed in the preceding paragraph and that
6 sets forth with specificity the justification for the confidentiality designation that was given by the
7 Designating Party in the meet and confer dialogue.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.
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11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.
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16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:
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(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

ONLY Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A:

(b) House Counsel of a Receiving Party to whom disclosure is reasonably necessary for this litigation, and who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its

1 confidential material and nothing in these provisions should be construed as authorizing or
2 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
9 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
10 Be Bound" that is attached hereto as Exhibit A.

11 10. FILING PROTECTED MATERIAL

12 Without written permission from the Designating Party or a court order secured after
13 appropriate notice to all interested persons, a Party may not file in the public record in this action
14 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5.

16 11. FINAL DISPOSITION

17 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
18 after the final termination of this action, each Receiving Party must return all Protected Material
19 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
20 abstracts, compilations, summaries or any other form of reproducing or capturing any of the Pro-
21 tected Material. With permission in writing from the Designating Party, the Receiving Party may
22 destroy some or all of the Protected Material instead of returning it. Whether the Protected Mate-
23 rial is returned or destroyed, the Receiving Party must submit a written certification to the Pro-
24 ducing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
25 deadline that identifies (by category, where appropriate) all the Protected Material that was re-
26 turned or destroyed and that affirms that the Receiving Party has not retained any copies, ab-
27 stracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
28 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all

1 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work prod-
 2 uct, even if such materials contain Protected Material. Any such archival copies that contain or
 3 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
 4 (DURATION), above.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protec-
 9 tive Order no Party waives any right it otherwise would have to object to disclosing or producing
 10 any information or item on any ground not addressed in this Stipulated Protective Order. Simi-
 11 larly, no Party waives any right to object on any ground to use in evidence of any of the material
 12 covered by this Protective Order.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED: June 20, 2008

15 BRAYTON PURCELL LLP

SEVERSON & WERSON
A Professional Corporation

17 By: _____ /s/
 18 Peter B. Fredman

By: _____ /s/
 Jan T. Chilton

19 Attorneys for Plaintiff David Keck

Attorneys for Defendant Bank of America,
N.A.

21 TOBIN & TOBIN

SHARTSIS FRIESE LLP

23 By: _____ /s/
 24 Paul E. Gaspari

By: _____ /s/
 Robert C. Ward

25 Attorneys for Defendants Central States
Indemnity Co. of Omaha and CSI Processing
LLC

Attorneys for Defendant TRG Customer
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11 Attorneys for Defendant TRG Customer
12 Solutions, Inc. dba Telespectrum

13

14 PURSUANT TO STIPULATION, IT IS SO ORDERED:

15 DATED: June __, 2008

16
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18 Honorable Charles R. Breyer
19 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Northern District of California on June ___, 2008 in the case of *David Keck v. Bank of Amer-*
ica, et al., no. CV 08-1219 CRB. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
14 Order, even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of _____
16 [print or type full address and telephone number] as my California agent for service of process in
17 connection with this action or any proceedings related to enforcement of this Stipulated Protective
18 Order.

19 Date:

20 | City and State where sworn and signed:

21 Printed name:

22 | Signature:

23